CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 118

FOX FILM CORPORATION, APPELLANT,

vs.

PAUL H. DOYAL, ET AL., MEMBERS OF R. THE STATE REVENUE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED MAY 28, 1931

(35,931)

(35,931)

SUPREME COURT OF THE UNITED STATES

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R. C. NORMAN, STATE TAX COMMISSIONER.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 3, 1931

[fol. 1]

IN SUPERIOR COURT OF FULTON COUNTY

FOX FILM CORPORATION, Plaintiff in Error,

v.

R. C. NORMAN, State Tax Commissioner, Defendant in Error

BILL OF EXCEPTION AND ORDER THEREON—Filed June 11, 1930

GEORGIA,
Fulton County:

Be it remembered, That on the 4th day of June, 1930, there came on to be heard in the Superior Court of Fulton County, Georgia, before the Honorable John D. Humphries, one of the Judges of said Court then and there presiding, the case of Fox Film Corporation v. R. C. Norman, State Tax Commissioner, the same being an application on the part of plaintiff for an injunction against defendant. Said hearing was had pursuant to an order or rule nisi of the court entered upon the filing of the original petition.

Defendant having been served and having filed a demurrer to the petition, and both sides having announced ready, the said application for an injunction was considered upon the pleadings filed, there having been no issues arising upon any traverse of a substantive fact.

After argument of counsel, the court, at the conclusion of the hearing, to wit, on June 4, 1930, did enter an order sustaining defendant's general demurrer to the petition and denying said application for injunction, and did refuse the same.

To the judgment of the court sustaining the general demurrer, denying the application for injunction and refusing the same, plaintiff excepted, and now excepts and assigns the same as error and says that the court erred in not granting said application for an interlocutory injunc-
[fol. 2] tion, and that said judgment is error for the reason that as plaintiff contends, the grant of an injunction was required under law.

To the said judgment of the court sustaining the general demurrer, denying said application for an injunction and refusing the same, plaintiff excepted and now excepts and

assigns the same as error and says that the same was contrary to law because under the law said injunction should have been granted upon each and every ground set forth in plaintiff's original petition, and for the reasons stated in said petition.

Plaintiff, Fox Film Corporation, names itself as plaintiff in error herein and the said R. C. Norman, State Tax Commissioner, as defendant in error.

Plaintiff specifies as material to a clear understanding of the errors complained of the following portions of the record, to wit:

1. The original petition filed in office of the clerk of the Superior Court of Fulton County on April 18, 1930, with all entries thereon.

2. The acknowledgment of service of the petition and rule nisi, entered by defendant's attorney on said petition on April 17, 1930.

3. The rule nisi and order of the court entered upon the presentation of said original petition in April 18, 1930.

4. The demurrer of defendant to the petition and all entries thereon.

5. The order of the court entered on the 4th day of June, 1930, sustaining the demurrer and denying and refusing the injunction.

Plaintiff in error comes now on this 11th day of June, 1930, and presents to his Honor, John D. Humphries, who presided in said case, this its bill of exceptions, the same being tendered within twenty days from the date of the order denying said interlocutory injunction and within the [fol. 3] time prescribed by law, and asks that the same be signed and certified according to the statutes in such cases made and provided in order that said case may be carried to the Supreme Court of Georgia and that the errors complained of may be reviewed and corrected by that court.

Sutherland & Tuttle, Joseph B. Brennan, Attorneys for Plaintiff in Error.

P. O. address: Atlanta Trust Company Bldg., Atlanta, Georgia.

I certify that the foregoing bill of exceptions is true and contains all of the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Fulton county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be immediately transmitted to the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This 11th day of June, 1930.

John D. Humphries, Judge Fulton Superior Court.

[fol. 4] [File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

[fol. 5] IN SUPERIOR COURT OF FULTON COUNTY

PETITION—Filed April 18, 1930

Fox Film Corporation, hereinafter called the plaintiff, brings its petition against R. C. Norman, State Tax Commissioner of Georgia, and shows to this Honorable Court the following facts:

1. Defendant is a citizen of Georgia and resides in the City of Atlanta in Fulton County, Georgia.

2. The plaintiff is a corporation organized and existing under the laws of New York, and engaging within Georgia in the business of licensing copyrighted motion pictures.

3. During the last quarter of the year 1929, to wit, the three months ending December 31, 1929, plaintiff was the owner and proprietor of certain copyrights granted by the United States of America upon motion picture films or productions.

4. As such owner plaintiff had the exclusive right to project and exhibit certain films or productions and to license the same for projection or exhibition.

5. During said three months period ended December 31, 1929, plaintiff granted through its office at Atlanta, Georgia,

to various motion picture exhibitors, licenses under the copyrights of several photoplays owned by plaintiff.

6. During said three months period ended December 31, 1929, plaintiff received from said exhibitors, as royalties under said copyrights, substantial sums, to wit, the sum of $107,543.58, which constituted plaintiff's gross receipts from said copyrights.

7. All of such receipts as referred to in the next preceding paragraph were obtained by plaintiff as distributor from various exhibitors under the provisions of a standard exhibition contract, all of said contracts being similar with [fol. 6] the exception of the times, places, amounts and subject-matter to be shown, the language of the said contracts relating to the granting of such licenses being as follows:

"Second. (a) The distributor hereby grants to the Exhibitor, and the latter accepts, a license under the respective copyrights of the several photoplays designated and described in the schedule herein subject to the terms and conditions hereinafter stated to exhibit (during the period of one year commencing with the date fixed or determined as hereinafter provided for the exhibition in the theatre hereinafter designated of the first photoplay deliverable hereunder, unless otherwise in the Schedule provided) each of such photoplays at the said theatre only for the number of successive days in the said Schedule provided. If more than one theatre is hereinafter designated no photoplay is licensed hereunder for exhibition at more than one of such theatres unless otherwise specifically agreed upon in the Schedule.

"Third. The Exhibitor agrees to exhibit under said license said photoplays, but only at the theatre hereinafter specified, on the exhibition date or dates fixed in the Schedule or determined as hereinafter provided, and not to allow any positive print thereof to leave the Exhibitor's possession during the period specified for the exhibition thereof by the Exhibitor, nor to exhibit or to permit the exhibition of any such positive print at any other time or place. Such license shall be specifically for such exhibition of such photoplays, and for no other purpose.

Fourth. The Exhibitor agrees to pay for such license as to each of such photoplays the fixed sums herein specified at least three (3) days in advance of the date of shipment from the Distributor's Exchange or from the last previous [fol. 7] exhibitor of the positive print thereof.

8. On the 29th day of January, 1930, plaintiff pursuant to the gross Receipts Tax Law of Georgia, being the Act approved August 29, 1929, and set out in Georgia Laws, 1929, page 103, made the return of its gross receipts, as required by said law, on Form 100, which was furnished by defendant as State Tax Commissioner. Said return was a true and correct return of all gross receipts derived by plaintiff from its business done through its Georgia office.

9. Said return showed gross receipts in the sum of $9,982.59, inclusive of the receipts described in the paragraph below.

10. Said return showed that the further sum of $107,543.56, representing royalties from the United States copyrights, referred to above, were received by plaintiff through its Georgia office during the three months period ended December 31, 1929, which sum, however, was claimed by plaintiff to be exempt from taxation under the Georgia Gross Receipts Tax Law, referred to above.

11. Of said sum of $107,543.56, representing royalties from United States copyrights, as described above, the sum of only $24,458.20, represents royalties, paid to plaintiff under the standard form of licensing contracts, described above, by motion picture exhibitors within the State of Georgia.

12. Defendant as State Tax Commissioner of Georgia claims the right to include the said sum of $24,458.20, representing royalties from the United States copyrights above referred to in plaintiff's total gross receipts for the purpose of computing a tax thereon under the provisions of said gross Receipts Tax Law of Georgia, referred to above.

13. Said Georgia Gross Receipts Tax Law, as construed [fol. 8] and applied to provide for the taxation of royalties from United States copyrights is unconstitutional, being in violation of Article 1, Section 8 of the Constitution of the United States, and being in effect a tax by one of the sev-

eral states upon an instrumentality of the United States or the gross income derived therefrom.

14. The only tax due by this plaintiff for the period ended December 31, 1929, is a tax of two mills on each dollar on the sum of $2,482.59, which said amount is the excess of the gross receipts, exclusive of royalties from copyrights, over the quarterly exemption of $7500.00 allowed by law. Plaintiff paid the said tax amounting to $4.98 on the 29th day of January, 1930.

15. Defendant has assessed against plaintiff an additional gross receipts tax in the sum of $48.92 for the three months period ended December 31, 1929, which tax is based upon the "inclusion" by said defendant in plaintiff's taxable gross receipts for said period of the sum of $24,458.20, representing royalties from United States copyrights, received by plaintiff from motion picture exhibitors within Georgia.

16. Defendant has served upon plaintiff notice of said assessment.

17. Defendant has refused to recognize the claim of plaintiff, that said royalties from United States copyrights are exempt from taxation by the State of Georgia.

18. Defendant has threatened and continues to threaten to collect said sum of $48.92 as taxes due under the Gross Receipts Tax Law, referred to above.

19. In including plaintiff's royalties from United States copyrights in plaintiff's taxable gross receipts, as above described, defendant has purported to act under said Gross [fol. 9] Receipts Tax Law of Georgia, referred to in paragraph 8 above, which defendant claims should be construed to provide for the taxation of royalties from United States copyrights.

20. Plaintiff is informed and believes that if it shall pay said tax, it will be without adequate remedy at law under the procedure provided by the laws of Georgia, and in particular the Georgia Gross Receipts Tax Act, referred to above, for the reason that the provisions in said Gross Receipts Tax Act with reference to appeals to the State Tax Board and suit or actions in the superior court and appeals therefrom to the Supreme Court are vague, indefinite and

uncertain; and for the further reason that it is questionable and uncertain whether or not a refund by the State or the Tax Commissioner is constitutionally authorized by said act on account of the failure of the title of said act to cover the subject of refunds: and for the further reason that there is no other provision in the laws of Georgia authorizing suits for the recovery of taxes illegally collected even where paid under protest. Unless defendant is enjoined and restrained from the collection of said taxes, therefore, plaintiff will be without a plain, adequate and complete remedy, and will suffer irreparable injury and damages.

21. In addition to the tax assessed by defendant against plaintiff for the three months period ended December 31, 1929, as described above, defendant has threatened to assess against plaintiff heavy penalties, provided by the Gross Receipts Tax Law. Said penalties are illegal for the reason that the tax upon which the penalties are based are illegal, as set forth in detail above. Plaintiff is informed and believes, however, that if it is forced to pay said penalties the law offers no remedy whatever for their recovery back, and unless defendant is enjoined and re-
[fol. 10] strained from the collection of said penalties, plaintiff will suffer irreparable injury and damages.

22. In addition to the assessment made by defendant against the plaintiff for the three months period ended December 31, 1929, defendant has proposed and threatened, and continues to threaten, to assess and collect from plaintiff a gross receipts tax based upon the inclusion in plaintiff's gross receipts of any income from royalties from United States copyrights which plaintiff may collect through its Georgia office from motion picture exhibitors within Georgia during the period covered by the Georgia Gross Receipts Tax Law, to wit, down to December 31, 1931. Plaintiff has already acquired such additional income from royalties from United States copyrights through its Georgia office, since December 31, 1929; and plaintiff reasonably expects to acquire additional income in large amounts from United States copyrights through its Georgia office, as described above, between now and December 31, 1931. If the law of Georgia provides any remedy at law,

for the recovery of taxes wrongfully and illegally collected, resort to such remedy by plaintiff would involve a multiplicity of suits against this defendant for the reason that a separate cause of action would arise in favor of plaintiff for each three months period, beginning with the period ended December 31, 1929, and running down to December 31, 1931.

23. Said Gross Receipts Tax Act, referred to above, provides that the tax imposed by said act shall constitute a lien upon all the property of the taxpayer so that the outstanding assessment by defendant against plaintiff of taxes based upon the inclusions in plaintiff's taxable gross receipts of royalties from United States copyrights would constitute a cloud upon plaintiff's title to property which it owns in Georgia.

[fol. 11] Wherefore, waiving discovery, plaintiff prays:

1. That this court grant proper decrees temporarily and permanently enjoining and restraining defendant, his successors in office and agents, from proceeding further with the assessment and collection of said threatened tax so assessed, measured as aforesaid by including said gross income from copyrights in plaintiff's taxable gross receipts.

2. For such other and further relief as the court deems proper.

3. Also that process issue requiring defendant to be and appear at the next term of this Honorable Court to answer this complaint.

Southerland & Tuttle, Joseph B. Brennan, Attorneys for Plaintiff.

Duly sworn to by Jack G. Leo. Jurat omitted in printing.

[fol. 12] IN SUPERIOR COURT OF FULTON COUNTY

ORDER TO SHOW CAUSE

The foregoing bill read and considered. The same is sanctioned and ordered filed. Let the defendant be served, and let him show cause, if any he has or can, before me at

Fulton County courthouse, Atlanta, Georgia, on the 26 day of April, 1930, at 9:30 o'clock a. m., or as soon thereafter as counsel can be heard, why the prayers of the bill should not be had and allowed. This 18 day of April, 1930.

Virlyn B. Moore, Judge Superior Court.

[File endorsement omitted.]

IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

SUMMONS—Filed April 18, 1930

To the Sheriff, or his deputy, of said county, Greeting:

The defendant is hereby required, personally or by attorney to be and appear at the superior court, to be held in and for said county on the first Monday in July, 1930, then and there to answer the plaintiff's complaint, as in default thereof said court will proceed, as to justice shall [fol. 13] appertain.

Witness the Honorable John D. Humphries, Judge of said court, this 18 day of April, 1930.

Fred F. Edwards, Deputy Clerk.

[File endorsement omitted.]

IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

DEMURRER—Filed June 4, 1930

Comes now the defendant, R. C. Norman, as State Tax Commissioner, and demurs to the petition in the above stated cause upon the following grounds:

1st. Because no cause of action is set forth.

2nd. Because there is no equity in the petition.

3rd. Because under the facts stated the plaintiff is not entitled to the relief sought.

4th. Because the tax, the levy, and the enforcement of which is sought to be enjoined is not a tax upon an instrumentality of the United States, and the tax is not in violation of the Constitution or laws of the United States.

5th. Because the tax imposed by the act approved August 29, 1929, is not a tax upon copyrights or royalties received from copyright articles or productions, but is an excise or privilege tax upon persons and corporations engaged in businesses and occupations within the State of Georgia, measured by the receipts of such businesses and [fol. 14] occupations at certain rates prescribed in the Act.

6th. Because the excise or privilege tax imposed by the Act approved August 29, 1929, upon persons engaging or continuing in business within the State measured by the receipts of the business engaged in at rates fixed in the Act, does not impose a tax upon instrumentalities of the United States, though income from such instrumentalities may be included in the gross receipts from the business of the person subject to the privilege tax imposed.

7th. Because royalties paid for the use of copyright productions or articles are not instrumentalities of the United States and are not exempted from taxation by the States under the constitution and laws of the United States.

8th. Because the excise tax upon the privilege of engaging or continuing in business within the State of Georgia levied by the Act approved August 29, 1929, is not in violation of the constitution and laws of the United States, the tax imposed being upon the privilege of engaging in business within the State measured by the receipts from the business engaged in. Such tax does not interfere with the exclusive privilege granted by a copyright, such privilege not being taxed by the act and any interference therewith being incidental, indirect and remote.

9th. Because the excise or privilege tax imposed by the Act approved August 29, 1929, does not diminish or effect in any degree the right given by Congress to the owner of a copyright to exclude others from reproducing, making, using or vending any production or article covered by such copyright, nor interfere with the full enjoyment of the privilege and monopoly granted to the owner of such copyright.

[fol. 15] Wherefore defendant prays that these, his grounds of demurrer may be inquired of by the court and that the bill may be dismissed.

Orville A. Park, Defendant's Attorney.

[File endorsement omitted.]

In Superior Court of Fulton County

Order Sustaining Demurrer & Denying Injunction

This cause coming on to be heard upon the rule to show cause why an injunction should not be granted and defendant having demurred to the petition, after argument had:

It is considered and ordered that the demurrer be sustained, the injunction be denied and that the suit be dismissed.

Plaintiff having announced its intention of "suing" out a bill of exceptions to review this order and judgment, it is further ordered that this judgment be suspended until the cause can be reviewed by the Supreme Court, and the final termination of the cause therein.

And it is so ordered, this 4th day of June, 1930.

John D. Humphries, Judge S. C. A. C.

[fol. 16] Clerk's certificate to foregoing paper omitted in printing.

[fol. 17] In Supreme Court of Georgia

Opinion—Decided February 27, 1931

By the Court:

This case coming on for decision by a full bench of six Justices, and they being equally divided in opinion as to whether the court erred in sustaining a demurrer to the petition and in refusing an interlocutory injunction, Russell, C. J., and Atkins and Hill, JJ., being of the opinion that the court erred, and Beck, P. J., and Gilbert and Hines, JJ., being of the opinion that the court did not err, the judgment is affirmed by operation of law.

[fol. 18] IN SUPREME COURT OF GEORGIA

7927

[Title omitted]

JUDGMENT—February 27, 1931

This case came before this court upon a writ of error from the Superior Court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed by operation of law, the court being equally divided in opinion as to whether the court erred in sustaining a demurrer to the petition and refusing an interlocutory injunction, Russell, C. J., and Atkinson and Hill, JJ., being of the opinion that the lower court should be reversed, and Beck, P. J., and Gilbert and Hines, JJ., being of the opinion that the lower court should be affirmed.

[fol. 19] IN SUPREME COURT OF GEORGIA

[Title omitted]

CERTIFICATE—Filed April 17, 1931

This case having been decided by a divided court, the Justices being equally divided in opinion as to whether the Superior Court erred in sustaining a demurrer to the petition and in refusing an interlocutory injunction, and the judgment of the Superior Court having been accordingly affirmed by operation of law, and it appearing that Plaintiff in error intends to file a petition for appeal to the Supreme Court of the United States, it is hereby certified that the sole issues presented to this Court were the question as to whether the Georgia Gross Receipts Tax Act (Laws 1929, p. 103) should be construed to apply to the royalties from United States copyrights, described in the bill of complaint, and the question as to whether said Act as so construed is violative of the Constitution of the United States, in that such application of said Act would result in an undue burden upon Federal instrumentalities, and in that it would unduly interfere with the power conferred upon the Federal Government by Article I, Section 8, Clause 8 of the Constitution of the United States. It is further certified that these issues were considered by this court and that the decision and judgment of this court rendered in this

case on February 27, 1931, necessarily involved a holding that said Act should be construed to apply to the receipts in question, and that said Act as thus construed is valid as against the constitutional objections mentioned.

[fols. 20 & 20½] This certificate is given for use in the prosecution of said appeal to the United States Supreme Court, in support of the jurisdiction of said Court, and shall be incorporated in the transcript of the record to be furnished by the Clerk of this Court.

This 16th day of April, 1931.

Richard B. Russell, Chief Justice of the Supreme Court of Georgia.

[File endorsement omitted.]

[fol. 21] IN SUPREME COURT OF GEORGIA

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed May 4, 1931

Petition for Appeal

Considering itself aggrieved by the final decision of the Supreme Court of the State of Georgia in the above entitled cause, the Plaintiff in Error therein Fox Film Corporation, hereby prays that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

Assignment of Errors

And the said Fox Film Corporation assigns the following errors in the record and proceedings in the said cause:

1. The Supreme Court of the State of Georgia erred in upholding and sustaining the validity of the Georgia Gross Receipts Tax Act, (Ga. Laws 1929, p. 103), as construed to apply to the royalties from United States copyrights described in the bill of complaint, in that said Act as so construed and applied imposes an undue and a direct burden upon federal instrumentalities, to-wit, copyrights granted by the United States, and unduly and directly interferes with the power conferred upon the Federal Government by [fol. 22] Article 1, Section 8, Clause 8 of the Constitution of the United States.

2. In said suit there was drawn in question the validity of the statute of the State of Georgia, commonly called the Georgia Gross Receipts Tax Act, approved August 29, 1929, (Ga. Laws 1929, p. 103), on the ground that it was repugnant to the Constitution and Laws of the United States, and the decision of the Supreme Court of the State of Georgia was in favor of the validity of said statute, which decision is hereby assigned as error.

Prayer for Reversal

For which errors Fox Film Corporation prays that said judgment of the Supreme Court of the State of Georgia, dated February 27, 1931, in the above entitled cause, be reversed and a judgment rendered in favor of the said Fox Film Corporation, and for costs.

W. A. Sutherland, Joseph B. Brennan, Counsel for Appellant.

[File endorsement omitted.]

[fol. 23] In Supreme Court of Georgia

[Title omitted]

Order Allowing Appeal—Filed May 4, 1931

Appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of Georgia on the 27th day of February, 1931, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of Georgia in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Georgia shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United

States, so that he shall have the same in said Court within thirty (30) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of Five Hundred ($500.00) Dollars.

Dated May 4, 1931.

Richard B. Russell, Chief Justice of the Supreme Court of the State of Georgia.

[File endorsement omitted.]

[fols. 24-28] Bond on appeal for $500, approved and filed May 4, 1931, omitted in printing.

[fol. 29] Citation, in usual form, showing service on R. C. Norman, omitted in printing.

[fol. 30] IN SUPREME COURT OF GEORGIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed May 4, 1931

To the clerk of the above court:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to wit:

1. All the original record filed in the Supreme Court of Georgia.

2. The opinion and judgment of the Supreme Court of Georgia rendered on February 27, 1931.

3. Certificate of Richard B. Russell, Chief Justice of the Supreme Court of Georgia, dated April 16, 1931, and filed April 17, 1931.

4. The petition for apepal, assignment of errors and prayer for reversal.

5. The order allowing appeal and the appeal bond.

6. The citation on appeal and acknowledgment of service thereon.

7. This præcipe with acknowledgment of service thereon.

8. Certificate of the clerk to the correctness of the record as to præcipe.

W. A. Sutherland, Joseph B. Brennan, Counsel for Appellant.

[fol. 31] Due and legal service of the above præcipe is hereby accepted and acknowledged, and all other and further service is hereby waived.

This 4th day of May, 1931.

R. C. Norman, O. A. Park, J. A. Smith, Counsel for Appellee.

[File endorsement omitted.]

[fols. 32 & 32½] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 33-35] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 28, 1931

Comes now the appellant and adopts his assignments of error as his statement of the points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

Dated May 4th, 1931.

W. A. Sutherland, Joseph B. Brennan, Counsel for Appellant.

Due and sufficient service of the above statement of points to be relied upon and designation of the parts of record to be printed in the above entitled case is hereby accepted.

R. C. Norman, O. A. Park, J. A. Smith, Counsel for Appellee.

Endorsed on cover: File No. 35,931. Georgia Supreme Court. Term No. 18. Fox Film Corporation, appellant, vs. R. C. Norman, State Tax Commissioner. Filed May 28, 1931. File No. 35,931.